



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2011

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086

OR2011-04319

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412741 (ORR #ASLL010511).

The Plano Police Department (the "department") received a request for report number 2010-198856. You state the department has released some information to the requestor. You claim the portions of the submitted information you marked are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you states the submitted information pertains to a department case that is currently inactive, but which has not closed. However, you do not explain, and it is not clear from your arguments, how release of the information you marked at this time would interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.301(e)(1)(A). Thus, we find you have failed to demonstrate the applicability of

section 552.108(a)(1) of the Government Code to the submitted information, and the information you marked may not be withheld on that basis.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate and embarrassing. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree the information we marked reveals private medical details and other information that is highly intimate or embarrassing and of no legitimate public concern. The department must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you do not explain how the remaining information you marked is protected by common-law privacy.

We note some remaining information may be subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). We note the requestor has a right to his own e-mail address under section 552.137(b). *Id.* § 552.137(b). The e-mail addresses we marked in the remaining information are not specifically excluded by section 552.137(c). As such, these e-mail addresses must be withheld under section 552.137, unless their owners affirmatively consent to their release.²

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

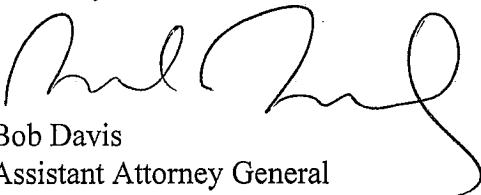
²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including e-mail addresses of members of the public under section 552.137 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless their owners consent to their release. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 412741

Enc. Submitted documents

c: Requestor
(w/o enclosures)